



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

KIRT REPP DC
PO BOX 9973
THE WOODLANDS TX 77387

Respondent Name

METROPOLITAN TRANSIT AUTHORITY

Carrier's Austin Representative

Box Number 19

MFDR Tracking Number

M4-13-1950-01

MFDR Date Received

APRIL 2, 2013

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "the insurance carrier has failed to properly adjudicate our reconsideration as required by current rule."

Amount in Dispute: \$1,555.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The health care at issue was beyond the scope of the chiropractor's practice. The chiropractor failed to get preauthorization...The carrier asserts that it has paid according to applicable fee guidelines and challenges whether the disputed charges are consistent with applicable fee guidelines."

Response Submitted By: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 2, 2012	CPT Code 95860	\$375.00	\$0.00
	CPT Code 95903 (X4)	\$295.00/each	\$0.00
TOTAL		\$1,555.00	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §137.100, effective January 18, 2007, sets out the use of the treatment guidelines.
3. 28 Texas Administrative Code §133.250, effective May 2, 2006, sets out the timeframe for filing a request for

reconsideration of payment.

4. 28 Texas Administrative Code §134.203, effective March 1, 2008, 33 *Texas Register* 364, sets the reimbursement guidelines for the disputed service.
5. 22 Texas Administrative Code §75, effective December 24, 2009, 34 *Texas Register* 9208, sets out the scope of practice for chiropractors.
6. District Court of Travis County, 250th Judicial District No. D-1-N-GN-06-003451, Honorable Stephen Yelenosky, Judge Presiding, Order on cross-motions for partial summary judgment dated November 24, 2009.
7. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012.
8. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Mandate dated August 8, 2013.
9. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits

- 170-Workers Compensation State Fee Schedule Adjustment.
- 197-Payment denied/reduced for absence of precertification/authorization.
- 197-F-wave tests are not recommended by the ODG. As such, the treatment exceeds the ODG, therefore, preauthorization is required.
- 151-Payment adjusted because the payer deems the information does not support this many services.
- 193-Original payment decision is being maintained. This claim was processed properly the first time.
- 29-The time limit for filing has expired.

Litigation Background for Needle EMG and MUA

Portions of the Texas Board of Chiropractic Examiners rules of practice were challenged by the Texas Medical Association and the Texas Medical Board in 2009. At issue was whether 22 Texas Administrative Code §75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) were within the scope of chiropractic practice in Texas. Specifically, the parties sought judgment on whether rules allowing Chiropractors to perform needle electromyography (EMG) and manipulation under anesthesia (MUA) were valid. On November 24, 2009, the 345th District Court issued a judgment in which presiding judge Honorable Stephen Yelenosky concluded that needle EMG and MUA exceeded the statutory scope of chiropractic practice in Texas. The Texas Board of Chiropractic Examiners appealed the district court's judgment to the Texas Court of Appeals, Third District. The Texas Court of Appeals in *Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n.*, 375 S.W.3d 464 (Tex. App. – Austin, 2012, pet. den.) issued an opinion affirming the district court's judgment, and concluding that needle EMG and MUA services are not within the chiropractic scope-of-practice. The Chiropractic Board exhausted its appeals and on August 8, 2013, the mandate affirming the district court's judgment was issued. The mandate states "...we affirm the remainder of the district court's judgment that subparts 75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) of the Texas Board of Chiropractic Examiners' scope-of-practice rule are void." In accordance with the Texas Court of Appeals opinion, the final mandate, and the scope of chiropractic practice requirement in 28 Texas Administrative Code §134.203(a)(6), needle EMG and MUA services may not be reimbursed.

Issues

1. Does a timely filing issue exist?
2. Is the rendering provider eligible to perform needle electromyography?
3. Does a preauthorization issue exist?

Findings

1. According to the reconsideration explanation of benefits, the respondent raised the issue of timely filing.
28 Texas Administrative Code §133.250(b) states "The health care provider shall submit the request for reconsideration no later than eleven months from the date of service."
The requestor submitted a fax report dated March 2, 2013 requesting reconsideration, this date is within the time frame allowed by 28 Texas Administrative Code §133.250(b); therefore, a timely filing issue does not exist in this dispute.
2. CPT code 95860 is defined as "Needle electromyography; 1 extremity with or without related paraspinal areas." According to the medical documentation found, this service was performed by Kirt Repp, D.C. (Doctor of Chiropractic). The Texas Court of Appeals in *Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n.*, 375 S.W.3d 464 (Tex. App. – Austin, 2012, pet. den.) issued an opinion affirming the district court's judgment, and concluding that needle EMG and MUA services are not within the chiropractic scope-of-practice of chiropractors. 28 Texas Administrative Code §134.203(a)(6) states "Notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act." The division finds that disputed service code 95860 is not within the scope of chiropractic practice because it is an

electro-diagnostic test that involves the insertion of a needle into the patient. Therefore, no reimbursement can be recommended for CPT code 95860 pursuant to 28 Texas Administrative Code §134.203(a)(6).

3. According to the explanation of benefits, the respondent denied reimbursement for CPT code 95903 based upon reason code "197."

28 Texas Administrative Code §134.600(p)(12) requires preauthorization for "treatments and services that exceed or are not addressed by the Commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the carrier."

The requestor billed CPT code 95903 for the diagnoses 847.9-Unspecified site of shoulder and upper arm sprain and strain.

According to the Shoulder Chapter of the Official Disability Guidelines (ODG), nerve conduction studies are not a recommended treatment for a shoulder and upper arm sprain and strain; therefore, the disputed nerve conduction studies, CPT code 95903, required preauthorization. The requestor did not submit any proof that preauthorization was obtained. As a result, a preauthorization issue exists and reimbursement is not recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has not established that reimbursement is due for the specified services. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

09/27/2013

Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.